GVNW CONSULTING

August 4, 2005

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554

Dear Ms. Dortch: [VIA ECFS]

RE: Ex parte filing in CCD 96-45; CCD 02-33; WCD 04-36

On August 3, 2005, Jeff Smith, Ken Burchett and Jack Pendleton from GVNW Consulting met with Commissioner Ray Baum, Phil Nyegaard and Andy Margeson at the Oregon PUC offices in Salem, Oregon.

The purpose of this meeting was to provide some follow-up data regarding discussions that occurred during the July 20, 2005 ex parte meeting with Commissioner Baum, Mr. Nyegaard, and Mr. Margeson. We provided empirical data from four Oregon local exchange carriers that demonstrates a further manifestation of rural cost differences as compared to urban carriers, and underlies the rural carrier concerns with respect to the regulatory implementation issues surrounding the recent Brand X Supreme Court decision (case no. 04-277). This data is attached to this ex parte filing as Attachment 2.

<u>Assumptions used in Data Analysis</u>

In order to develop a threshold analysis of the regulatory impacts of DSL services being removed from Title II FCC authority, we analyzed the regulatory impact on a pro forma basis if the two major cost components related to the provision of DSL services are deregulated.

As noted in Attachment 1, the two major components are the subscriber loop and the related DSL circuit equipment (wideband circuit equipment categorized as Category 4.11). Currently, the subscriber loop is not assigned to DSL as a regulated service but could be if the DSL service were to be considered "deregulated." Multiple exchange companies have another cost component, which involves wideband transport between exchanges. This transport cost is currently recovered through NECA's DSL tariff. This transport cost is not included in the cost shifts summarized in the table below that are included in Attachment 2, but may be material for some companies.

The pro forma estimates shown in Attachment 2 were completed by using each of the four LEC's latest NECA cost study calculations, and adding in the number of DSL customers in the loop count input data as "miscellaneous" loops. This pro forma input approach has the impact of assigning a proportionate amount of the subscriber plant to DSL services. We believe this is likely a conservative approach to estimating the allocations of joint and common costs. The second step in the analysis is to then assign the DSLAM equipment found in COE Category 4.11 to the "miscellaneous" column. With both of these two direct cost components isolated in the miscellaneous column, the other indirect costs then "follow" based on the mechanics of the current cost study allocation rules.

After these estimated "DSL" costs have been isolated in the "miscellaneous" column, these pro forma results were used to adjust the high cost loop support (USF) data. The adjusted data was compared to the previous USF data, with the difference used to adjust the USF expense adjustment in the cost study run in order to capture an estimated total interstate revenue requirement shift.

One item not included in these initial threshold calculations for the four representative carriers is any impact from customer operations expenses that would be directly assigned to the DSL service. Additionally, we ignore, for this present analysis, the impact of the lag in USF payments.

The data in Attachment 2 is summarized in the following table:

Company Name	Pro forma monthly cost shift for two primary components per DSL customer
Colton Telephone Company	$ 93
Monitor Cooperative Telephone Company	$103
Pioneer Telephone Cooperative	$ 44
Scio Mutual Telephone Association	$101

<u>FCC Ancillary Authority</u>

At paragraph 25 of the Brand X decision, the Court clearly details the Commission's sufficient authority to structure its regulatory implementation of Brand X in a manner that considers the rural differences in the statement: "though the Commission has jurisdiction to impose additional regulatory obligations under its Title I ancillary jurisdiction to regulate interstate and foreign communications (cite omitted)."

Based on this language contained in the Supreme Court's decision, we respectfully submit that the Commission has the ability under its ancillary Title I authority to continue to permit small carriers to receive the current jurisdictional cost recovery for the provision of DSL services, based on Part 36 and Part 69 rules that are in effect today. In addition, we believe that the continuation of the NECA pooling and tariff option is another important ingredient of affordable broadband services in rural America. Absent the continuation of these cost recovery rules and pooling options, rural carriers will be unable to economically provision DSL services to their customers as we demonstrate with our representative data included as Attachment 2.

If there are any questions, please call me on 503.612.4409, or via electronic mail at jsmith@gvnw.com.

Sincerely,

[electronically filed]

Jeffry H. Smith
Vice-President and Division Manager, Western Region
Chairman of the Board of Directors

Attachment 1 – Jurisdictional Costs Issues Regarding Deregulating Broadband Service (DSL) For Rural Carriers

Attachment 2 – DSL Data for four local exchange carriers demonstrating potential Brand X impacts if FCC does not properly assert its Title I ancillary authority

Copy to Commissioner Ray Baum
Phil Nyegaard, OPUC
Andy Margeson, OPUC
Brant Wolf, OTA Executive Director
Rick Finnigan, OTA Counsel
Ken Burchett, GVNW
Jack Pendleton, GVNW
Ben Harper, GVNW
Carsten Koldsbaek, GVNW
Bob DeBroux, Rural Alliance

Attachment 1 – Jurisdictional Costs Issues Regarding Deregulating Broadband Service (DSL) For Rural Carriers

Classification of Facilities

There are two major classifications of the facilities used to deliver the DSL service: the Cable and Wire Facilities and the Circuit equipment. The current recovery procedures are significantly different for this service depending on its classification as a regulated service, or a non-regulated service.

Regulated Treatment

If the DSL service is offered as a regulated service the facilities are assigned as follows:

- The Cable and Wire Facilities in the loop to the customers premise is treated as Subscriber Plant (Separations Category 1.3). The cost of these facilities is recovered from end user charges for basic service and from the Universal Service HCL fund. (Note that none of these facilities are included in the charges for the DSL service.)

- The circuit equipment is assigned to Wideband used for Special Access (Category 4.11). The cost of this equipment is included in the interstate special access and recovered through direct charges for DSL service.

- The cable and wire facilities for the transport are treated as special access (Category 3.22). The cost of this plant is included in the interstate special access and recovered through direct charges for DSL service. These costs relate mainly to multiple exchange companies and the impact was not included in the initial threshold analysis presented in Attachment 2.

Non-regulated Treatment

When the DSL service is offered on a non-regulated basis, the cost of the joint use facilities must be removed according to the Part 64 rules.

- The Cable and Wire Facilities would have to be allocated between regulated and non-regulated. This would cause a significant reduction in HCL support for the high cost rural companies.

- The circuit equipment associated with the DSL service would have to be assigned to non-regulated. Since the DSL equipment was used in the development of the regulated DSL rate, it would seem that a mere transfer to non-regulated and developing the non-regulated charges using these would produce similar rates and recovery, this is not true however, because the additional cost of the loop would have to be included in the charges to the DSL customer. Also, to the extent a company benefits from the current NECA pooling process with regards to the DSL service, this benefit would be lost if the service is non-regulated.

Summary of Major Concerns

- Potential Loss of jurisdictional cost recovery
- Potential Loss of High Cost Loop support
- Potential loss of benefits associated with pooling

Attachment 2 – See Excel spreadsheet